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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,061	08/24/2001	Lawrence Howell Sawyer	KCC-16,208	1730

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 02/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K.

Office Action Summary

Application No.

09/939,061

Applicant(s)

SAWYER ET AL.

Examiner

C. Lynne Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-56 is/are pending in the application.
- 4a) Of the above claim(s) 40-56 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5. 6) ☐ Other: _____

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DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-39, drawn to an absorbent pad, classified in class 604, subclass 367.
- II. Claims 40-56, drawn to a method of making an absorbent pad, classified in class 156, subclass 60.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the absorbent pad could be made by a process involving compacting the absorbent pad prior to removing it from the forming screen.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Melanie Rauch on 30 January 2003 a provisional election was made without traverse to prosecute the invention of the absorbent pad, claims 1-39. Affirmation of this election must be made by applicant in replying to this Office action. Claims 40-56 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 1-11, and 15-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Lariviere et al. (6,515,195).

Lariviere discloses an absorbent pad comprising between 30 and 85 weight percent superabsorbent material homogeneously mixed with between 15 and 70 weight percent pulp fluff, as described in column 5, lines 42-53, and column 6, lines 28-29. The absorbent pad has a density greater than about 0.28 g/cc, as disclosed in column 6, lines 49-51, an absorbent capacity between about 14 and 40 grams, as disclosed in column 1, lines 62-63, and a thickness between 0.5 and 3.0 mm, as disclosed in column 8, line 30. It is noted that the absorbent capacity disclosed by Lariviere is for the capacity to absorb a 1.0 w/v% saline solution, as described in column 13, line 12. However, the capacity to absorb a 1.0 w/v% saline solution would inherently be less than the capacity to absorb a 0.9 w/v% saline solution, and therefore the absorbent

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capacity of the absorbent pad disclosed by Lariviere would be at least as great for a 0.9 w/v% saline solution as for the 1.0 w/v% saline solution.

With respect to claims 2 and 3, the absorbent pad has a density greater than 0.32 g/cc, as disclosed in column 6, lines 49-51.

With respect to claims 4 and 5, the absorbent pad comprises between 50 and 75 weight percent superabsorbent material, as disclosed in column 5, lines 44-46.

With respect to claim 6, the absorbent pad further comprises a plurality of man-made fibers, as disclosed in column 6, lines 37-38.

With respect to claim 7, the absorbent pad further comprises a plurality of carrier particles, as disclosed in column 9, lines 27-54.

With respect to claims 8 and 9, the absorbent pad has a thickness of between 0.7 and 2.0 mm, as disclosed in column 8, line 30.

With respect to claims 10 and 11, the absorbent pad has an absorbent capacity of at least 18 grams, as disclosed in column 1, lines 62-63.

With respect to claims 15 and 18, the absorbent pad is comprised in an absorbent article, a feminine hygiene product, as disclosed in column 1, lines 8-10.

With respect to claims 16, 17, 19, and 20, the absorbent article is an incontinence product, of which diapers, training pants, and swim wear are varieties, as described in column 16, lines 27-31.

With respect to claim 21, the superabsorbent material forms a gradient within the absorbent pad, as disclosed in column 6, lines 29-30.

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With respect to claims 22 and 23, the absorbent pad comprises between 50 and 75 weight percent superabsorbent material, as disclosed in column 5, lines 44-46.

With respect to claim 24, the absorbent pad further comprises a plurality of man-made fibers, as disclosed in column 6, lines 37-38.

With respect to claim 25, the absorbent pad further comprises a plurality of carrier particles, as disclosed in column 9, lines 27-54.

With respect to claims 26 and 27, the absorbent pad has a thickness of between 0.7 and 2.0 mm, as disclosed in column 8, line 30.

With respect to claims 28-30, the absorbent pad has an absorbent capacity of between about 14 and 40 grams, and at least 18 grams, as disclosed in column 1, lines 62-63.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-14 and 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lariviere et al. (6,515,195) as applied to claims 1 and 21 above, and further in view of Coles (5,722,967).

Lariviere discloses all aspects of the claimed invention but remains silent as to the gel strength of the superabsorbent material.

Coles discloses a superabsorbent material for use in an absorbent pad having a gel strength of at least 0.85, as described in column 7, lines 6-9. Superabsorbent materials having a high gel strength are well-known to also be highly stable and absorbent. It would therefore be obvious to one of ordinary skill in the art at the time of invention for the superabsorbent material of Lariviere to have a gel strength of at least 0.85, as taught by Coles, to provide a highly absorbent material.

Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lariviere et al. (6,515,195) as applied to claim 21 above, and further in view of Carr et al. (5,462,537).

Lariviere discloses all aspects of the claimed invention but remains silent as to the placement of superabsorbent material within the absorbent pad.

Carr discloses an absorbent pad 3 comprising superabsorbent material 30 and fluff pulp, the superabsorbent material 30 forming a gradient, as shown in figure 8. The absorbent pad 2 includes more superabsorbent material 30 in a first end 4 than in a second end 6, to create a target absorbent area for a boy, as disclosed in column 2, lines 53-55.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to include more superabsorbent material in the first end of the absorbent pad of Lariviere, as taught by Carr, to create a target absorbent area for a boy.

Claims 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lariviere et al. (6,515,195) as applied to claim 21 above, and further in view of Faulks et al. (5,356,403).

Lariviere discloses all aspects of the claimed invention but remains silent as to the placement of superabsorbent material within the absorbent pad.

Faulks discloses an absorbent pad 16 comprising superabsorbent material 30 and fluff pulp, the superabsorbent material 30 forming a gradient, as shown in figure 2. The absorbent pad 16 includes more superabsorbent material 30 along its top surface, resulting in a drier body-contacting surface, as disclosed in column 6, lines 27-37.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to include more superabsorbent material in the top surface of the absorbent pad of Lariviere, as taught by Faulks, to create a drier body-contacting surface.

Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lariviere et al. (6,515,195) as applied to claim 21 above, and further in view of Kellenberger et al. (4,699,823).

Lariviere discloses all aspects of the claimed invention but remains silent as to the placement of superabsorbent material within the absorbent pad.

Kellenberger discloses an absorbent pad 10 comprising superabsorbent material 24 and fluff pulp, the superabsorbent material 24 forming a gradient, as shown in figure 2. The absorbent pad 10 includes more superabsorbent material 24 along its bottom surface, resulting in less gel blocking, as disclosed in column 6, lines 17-33.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to include more superabsorbent material in the bottom surface of the absorbent pad of Lariviere, as taught by Kellenberger, to reduce gel blocking.

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Claims 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lariviere et al. (6,515,195) as applied to claim 21 above.

Lariviere discloses all aspects of the claimed invention but remains silent as to the variation of concentration of the superabsorbent material. It would have been obvious to one of ordinary skill in the art at the time of invention to vary the concentration of the superabsorbent material by about 0.15 to about 0.25 g/cc, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



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CWA
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February 12, 2003